

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Crosswalk Community Church)	
	District D9, Map 111, Parcel 16.02)	Knox County
	<i>Claim of Exemption</i>)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-21(b)(2) from the partial denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization ("State Board") on May 24, 2006. By letter dated June 29, 2007, State Board staff attorney Emily Bennett notified the applicant as follows:

First, 90% of the trailer and a proportionate amount of underlying land have been approved for exemption with an effective date of May 5, 2006. The remaining portion of the trailer has been used by the construction contractor, and although he is an elder of the church, the use of that portion of the trailer for that purpose is not a qualifying religious use of the space.

Second, the new church building and 5 acres of land has been approved for exemption with an effective date of March 25, 2007. The remaining acreage has been denied exemption due to non-use....

Crosswalk Community Church ("CCC"), the applicant, appealed the staff attorney's initial determination to the State Board on September 18, 2007. The undersigned administrative judge conducted a hearing of this matter on November 14, 2007 in Knoxville. CCC was represented by James Slyman, a Ruling Elder and Trustee of the Church. Deputy Knox County Law Director Susan Crabtree and Paula Rudder, Director of Exemptions/Greenbelt in the Knox County Property Assessor's office, appeared on the Assessor's behalf.

Findings of Fact and Conclusions of Law

The 13.16-acre parcel in question, located at 2131 E. Governor John Sevier Highway, is bordered on the west by the French Broad River. CCC – an Evangelical Presbyterian Church founded in 2004 – purchased this relatively level tract from Josephine Duncan for \$220,000 on June 30, 2005. At that time, the congregation was meeting in leased space at the Sarah Simpson Professional Development Center in Knoxville.

In June, 2006, CCC commenced construction of a new worship/fellowship building on the subject land. This approximately 7,200-square-foot structure, surrounded by a paved parking area, was substantially completed on March 23, 2007.¹ CCC held its inaugural worship service in the new facility two days later. Ruling Elder/Treasurer F. D. Clepper, Sr. noted on the

¹CCC recently placed a small prefabricated storage building on the site.

appeal form that "[t]his is the first phase of a building program which will include a larger sanctuary and an education building wing."

According to Mr. Slyman's testimony at the hearing, during the construction of the new church building, CCC created a graveled "prayer trail" which runs the entire perimeter of the subject property (except for the front entrance). At least every week, he declared, this walking trail has been used by members of the Church and/or the community. Additionally, in cooperation with a local Boy Scouts troop, a series of steps affording access to the River has been installed. Several picnics, as well as kayak events under the supervision of an associate pastor, have been held in this area.

As shown in the recent photographs supplied by Ms. Rudder (Exhibit 1), there are no marked ball fields or courts on the premises. However, Mr. Slyman maintained that this land is used every week by youth groups for recreational activities.

CCC seeks exemption of the entire acreage as of June 15, 2006.² By then, CCC's pastor had established a temporary office in the "trailer" (mobile home) referred to in the staff attorney's initial determination letter.³

Article II, section 28 of the Tennessee Constitution authorizes, but not require, the legislature to exempt from taxation property which is "held and used for purposes purely religious, charitable, scientific, literary, or educational." The General Assembly has exercised this power by enacting a law stating that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific, or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists...; provided..., that no property shall be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion thereof is **actually** used purely and exclusively for religious, charitable, scientific or educational purposes. [Emphasis added.]

Tenn. Code Ann. section 67-5-212(a)(1)(A).

The State Board has adopted rules (effective July 14, 2004) which prescribe criteria for exemption of land owned by qualifying institutions such as CCC. Rule 0600-8-.02 establishes a presumption that such land is in actual use for exempt purposes if it underlies "exempt structures or paving," or if "the total land area claimed for exemption, including that which is underlying exempt structures, is **five acres or less**." [Emphasis added.] Paragraph (3) of that Rule provides (in relevant part) that:

The applicant for exemption may rebut the presumption by proving that vacant land which would be denied exemption under the

²For tax year 2007, the Assessor subclassified the portion of the subject land *not* approved for exemption by the State Board designee as "commercial" property and valued it at a total of \$134,000 (about \$1,650 per acre). Exhibit 2. It should be noted that, as defined for assessment purposes in Tenn. Code Ann. section 67-5-501(4), "industrial and commercial property" is not necessarily devoted to making a profit.

³This mobile home, the minimal 2006 and 2007 assessments of which are not in dispute, has since been sold by CCC and removed from the site.

presumption is in fact being **regularly** used for exempt purposes qualifying for exemption in accordance with law. [Emphasis added.]

But “[l]and held solely for future construction or other future uses does not qualify for exemption.” State Board Rule 0600-8-.02(5).

In this state, contrary to most other jurisdictions, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and educational institutions. See, e.g., George Peabody College for Teachers v. State Board of Equalization, 407 S.W.2d 443 (Tenn. 1966). Nevertheless, as the party seeking to change the initial determination on its application for exemption, CCC has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

It is understood that CCC acquired the subject land as its future home – not as a speculative real estate investment. There is also no indication that the Church has ever used the subject property for any purpose unrelated to the accomplishment of its mission. Yet, respectfully, the administrative judge is not persuaded that the State Board designee’s initial determination was erroneous.

Subject to certain conditions, Tenn. Code Ann. section 67-5-212(g) does provide for exemption of the value of *construction in progress* (CIP) on land acquired by an exempt institution. But that subsection

...has generally been construed to exempt **improvements** under construction, but not the underlying **land**....Exemption (of the underlying land) is recognized from and after, but not before, the improvements were completed and in use. [Emphasis added.]

Central Church, Inc. (Shelby County, Final Decision and Order, June 25, 2003), p. 2.

Further, the administrative judge has previously opined that:

This fundamental principle is not negated by the conduct of an occasional prayer service or other gathering at or near the construction site. Such activities do not rise to the level of actual occupancy and use of land for religious purposes. [Citations omitted.]

Brainerd Baptist Church (Hamilton County, Initial Decision and Order, October 21, 2005), p. 3.

To be sure, the law does not categorically preclude claims of exemption of any part of a parcel on which construction of a new church is under way. But the meager proof in this case – which did not include any photographs, records, or other documentation of the purported religious uses during the period of construction – does not warrant even a partial exemption of the land in question (except for that underlying the temporary office trailer) prior to the date of the first worship service on the subject property.

Nor, in the opinion of the administrative judge, is the evidence of record sufficient to overcome what amounts to a presumption *against* exemption of more than five acres of land associated with “exempt structures or paving” (such the church building and parking lot here). Although the walking trail and waterfront may be “regularly” used by CCC within the meaning of State Board Rule 0600-8-.02(3), those areas seem to constitute a fairly small percentage of the

total acreage. The lack of readily identifiable playgrounds or recreational amenities, as well as the plans for future construction, suggest that whatever usage CCC may actually have made of more than five acres of the subject land was "occasional" or "sporadic."

CCC may, of course, reapply for exemption of the unapproved acreage at such time as it developed and/or more intensively used.

Order

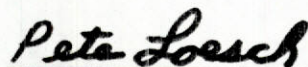
It is, therefore, ORDERED that the initial determination of the State Board's staff attorney be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order";** or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of December, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: James Slyman, Crosswalk Community Church
Susan E. Crabtree, Deputy Knox County Law Director
Paula Rudder, Director of Exemptions/Greenbelt, Knox Co. Property Assessor's Office